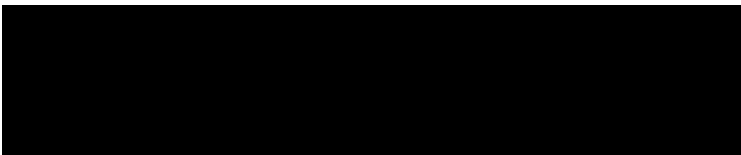


B9

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

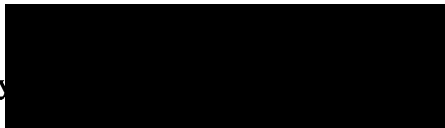


U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 03 047 54142

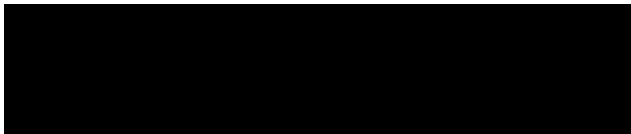
IN RE: Petitioner:
Beneficiary



JUN 09 2004

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

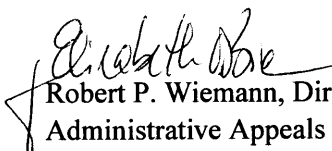
ON BEHALF OF PETITIONER:



Noted to
[illegible]
[illegible]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center on January 13, 2004. The petitioner appealed the director's denial to the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be rejected.

The petitioner is a native and citizen of Kenya who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director issued a request for additional evidence from the petitioner on September 4, 2003. The request for additional evidence was sent to the petitioner in care of the petitioner's attorney at the address listed on the Form I-360 application. The petitioner and counsel failed to respond to the request for additional evidence; therefore, he denied the petition after more than sixty days had lapsed since the issuance of the request for additional evidence. On appeal, counsel for the petitioner asserts that he never received notice of the request for additional evidence.

The regulation at 8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

As the director denied the petition due to abandonment, the decision was not properly appealed and must be rejected.

ORDER: The appeal is rejected.